

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH JOHNSON, COLBY GOROG,
JOSHUA FLINT, LOUIS ROBINSON and
MICHAEL LERRO, individually and on
behalf of all others similarly situated,

Plaintiffs,

- versus -

ELON MUSK, TESLA, INC. and THE
DOGECOIN FOUNDATION, INC.

Defendants.

Case No.: 1:22-cv-05037-AKH

**EVAN SPENCER DECLARATION
IN SUPPORT OF MOTION TO
APPOINT LEAD PLAINTIFFS**

I, Evan Spencer, declare the following under penalty of perjury:

1. I am the lead counsel for Plaintiffs in this case and submit this declaration in support of Plaintiffs' motion to appoint Colby Gorog, Joshua Flint, Louis Robinson and Michael Lerro as lead Plaintiffs and to select my firm as lead counsel.
2. After filing the Complaint on June 16, 2022, I was contacted by nearly 100 Dogecoin traders and holders who expressed varying interests regarding participation in this case.
3. The Complaint contained no claims for SEC violations and was based upon RICO violations and common law fraud.
4. On September 23, 2022, I published the SEC statutory notice with Accesswire.com, 17 days after the Amended Complaint was filed with SEC causes of action.
5. During the subsequent 60 days, dozens of prospective lead plaintiffs and class members contacted me.
6. Among them were a handful with damages in the range of \$60,000 and \$75,000 and one with \$150,000, who constituted the largest damages of anyone who contacted me at any time.

7. I sent all of these individuals emails with the opportunity to join the case as a plaintiff or class representative and the only person to accept this proposal as a class representative was Plaintiff Michael Lerro, who lost approximately \$150,000 trading Dogecoin.
8. In the Second Amended Complaint, we kept the original Plaintiff Johnson, together with Gorog, Flint, and Robinson, who had the largest damages from those named in the Amended Complaint, and then added Michael Lerro who was the only individual from the 60-day notice who came forward to participate in the case.
9. Of all the Plaintiffs and potential Plaintiffs and class members, I think the best candidates for lead Plaintiffs are Mr. Gorog, Mr. Flint, Mr. Robinson and Mr. Lerro
10. Each of these four individuals lost between \$17,000 - \$150,000 trading Dogecoin as a result of Defendants' market manipulation and fraud on the market.
11. While the original Plaintiff Keith Johnson lost 75% of his money trading Dogecoin as a result of the Defendants conduct, his loss was under \$200.
12. Each of these four individuals has committed to assisting with this action as stated in their Plaintiff SEC certifications filed with this Court.
13. All four of these individuals have chosen my firm to represent them in this case.
14. I have met in person with Mr. Gorog and my paralegal Robert Kimtis and I have spoken on the phone and communicated by email with all four Plaintiffs on a consistent basis.
15. I have been admitted to practice law for nearly 26 years and believe that I am qualified to represent the four Plaintiffs in conjunction with my contract attorneys who work anonymously for me, and New York City class action and securities firms that have given me detailed analysis and feedback on this action in anticipation of joining the case.
16. I have experience working for four law firms during my career and my own firm for several

years.

17. In all I have recovered millions of dollars for hundreds of clients in hundreds of civil cases, and have experience with all phases of litigation from pleading to appeals.
18. In federal court in California after being admitted only four years, I defeated George Lucas creator of Star Wars in the case of Lucasfilm, LTD, v. Media Market Group 182 F. Supp. 2d 897 (N.D. Cal Jan. 8, 2002), widely regarded as a major First Amendment victory for parody and satire.
19. Despite knowing nothing about copyright and trademark law, I submitted a brief, flew to California for oral argument, had a TRO dissolved, and the case was subsequently dismissed.
20. I have been involved in several other class actions in an associate capacity, including the Thimerosal litigation regarding mercury poisoning of infants, class actions against Match.com for fake profiles and false advertising, and a class action against restaurants who violated New York City Consumer Laws by charging automatic gratuities.
21. As a result of my lawsuit against the NFL Giants, Jets and MetLife Stadium, MetLife Stadium completely rewrote their website to remove all of the false advertising that my clients and I identified.
22. Since 2015, I have litigated several civil rights cases in the U.S. District Court of Nebraska on behalf of a client in the adult entertainment industry, allowing him to prosper in a religious community that tried to close his businesses without cause, as well as providing hundreds of jobs for dancers, security, and administrative workers.
23. In these cases, I single-handedly stood up to the billionaire Governor, the State Patrol, Mayors, City Attorneys, Police Departments, City Councils, Churches, and Administrative Agencies that were trying to destroy my client figuratively and literally.

24. I also have a great deal of experience and understanding with regard to Dogecoin and cryptocurrency generally, qualities which make me a perfect candidate to represent the lead Plaintiffs in this case.
25. In addition to qualified Plaintiffs and counsel, the Second Amended Complaint includes the reports of three independent expert witnesses, in addition to the forthcoming report of Plaintiffs' expert witness, Stan Smith who will testify that Dogecoin is in fact a pyramid scheme.
26. A motion to appoint lead Plaintiffs was not filed sooner because multiple class action and securities lawyers were investigating the case and performing due diligence in October and November 2022.
27. I sent copies of the Second Amended Complaint, summonses issued by the Court, and 60-day waivers of service to defense counsel.
28. Defendant Dogecoin Foundation, Inc. has executed a 60-day waiver of service.
29. Defendants Elon Musk and Tesla, Inc. have declined to waive service of process, so I have retained process servers in Texas and California to serve both of these Defendants.
30. I will provide all three Defendants with notice of this motion so they can enter an appearance and oppose the motion if they are so inclined.

s/Evan Spencer
Evan Spencer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of December 2022, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system giving notice to all parties in this action.

s/Evan Spencer
Evan Spencer